



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/608,223

06/30/2003

Leslie R. Sherrill

003544.00010

1776

22907

7590

01/27/2006

BANNER & WITCOFF

1001 G STREET N W

SUITE 1100

WASHINGTON, DC 20001

EXAMINER

ABBOTT, YVONNE RENEE

ART UNIT

PAPER NUMBER

3644

DATE MAILED: 01/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/608,223	Applicant(s) SHERRILL ET AL.	
	Examiner Yvonne R. Abbott	Art Unit 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-5 and 8-22 is/are pending in the application.
- 4a) Of the above claim(s) is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,3-5,12-15 and 20 is/are allowed.
- 6) ☒ Claim(s) 8,9,16-19 and 22 is/are rejected.
- 7) ☒ Claim(s) 10,11 and 21 is/are objected to.
- 8) ☐ Claim(s) are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. .
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. <u> </u> |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u> </u> | 6) <input type="checkbox"/> Other: <u> </u> |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 11/15/05 have been fully considered but they are not persuasive with respect to claims 8,9,16-19, and 22. As to claim 8, Applicants argue that Gellman et al.('458) fails to teach or suggest a solidified animal hide paste, and that the Gellman biscuit is mostly a wheat-based dough with particles of meat and/or meat product mixed therein. It is maintained that Gellman et al. ('458) disclose discrete, spaced meat pieces within a solidified animal hide granulate paste as presently claimed by Applicants by disclosing that meat and meat by- product particles (which include skins) can be used in combination and are blended and distributed uniformly in a dough (which inherently is a paste) which is then dried. (see Gellman et al. '458 col.7, lines 45-55). It should be noted that Applicants' disclosure fails to distinguish or define paste to be different from that disclosed in the prior art. In fact, paste is defined in general as "A soft, smooth, thick mixture or material, as: A smooth viscous mixture, as of flour and water or of starch and water, that is used as an adhesive for joining light materials, such as paper and cloth. The moist clay or clay mixture used in making porcelain or pottery. A smooth dough of water, flour, and butter or other shortening, used in making pastry. " The American Heritage® Dictionary of the English Language, Fourth Edition, Copyright © 2000 . This definition supports the application of the Gellman reference and refutes Applicants' assertion (with respect to claim 16) that "no paste is ever formed in Gellman". As to claim 16, Applicants also argue that neither Arnold, Gellman, or Lehn teach "encasing". Since Applicants' disclosure fails to define

Art Unit: 3644

encasing (as it pertains to the flavor chunks recited in claim 16) to mean anything other than them being "interspersed" (Applicants' specification, p. 21-22), it is maintained that the invention of claim 16 does not distinguish over the prior art which teaches interspersing flavor chunks in a paste. For the above reasons, the following rejections are maintained.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 22 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 22, "the flavor pieces" lacks prior antecedent basis.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 8,9,16-19, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Gellman et al. (4,743,458). Gellman et al. disclose an animal chew biscuit and method of making said biscuit having meat and meat-by-product particles distributed uniformly throughout the biscuit; wherein meat and meat by-product

Art Unit: 3644

particles are blended with, and uniformly and discretely distributed in the solid non-fat portion of the soft biscuit dough (col. 7, lines 45-55); wherein the biscuit comprises a blend of the meat, dough, water, humectant, and fat; wherein the dough composite comprises 0.5-10 percent of fat, 5-15 percent of glycerin humectant, and 40-50 percent wheat flour; wherein the meat and meat-by-products can be in the form of specs, flakes, chunks, chips, granules and the like (col. 4, lines 57-59); wherein the term "meat-by-product" includes skins (i.e., hide) (col. 6, lines 29-37); wherein the preferred meat and/or by-product particles are of dehydrated cured meat referred to as jerky (col. 6, lines 47-56); wherein by nature of the shaped biscuit being round, T-bone, chop or steak-like, square, triangular, animal-shaped, and the like (which is considered to include cylindrical), (col. 4, lines 51-54) there will be a visible exterior surface and interior with some of the pieces located on the visible exterior and some located in the interior; and wherein the dough ingredients include flavorings, vitamins and minerals which are considered to be health affecting additives.

6. Claims 16-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Lehn et al. (4,702,929). Lehn et al. disclose a method for manufacturing munchies wherein pieces of animal hides are mixed with starch product, extruded into desired shapes, and dried through heating zones and wherein discrete pieces of flavor product such as fishmeal may be added to the composite (col. 2, lines 36-37).

7. Claim 16 is rejected under 35 U.S.C. 102(e) as being anticipated by Arnold et al. (6,360,696). Arnold et al. disclose an animal chew toy which is made using a composite of gelatin, plasticizer (preferably glycerin), water, and additional additives

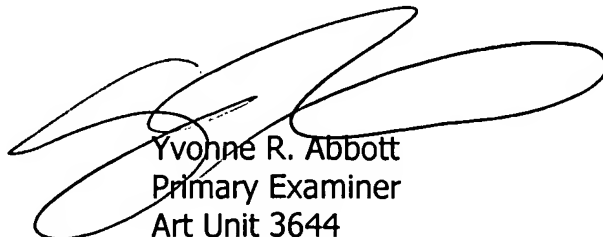
Art Unit: 3644

such as flavorings, nutrients and minerals which are health affecting additives, preservatives, and digestible filler material including edible bits or pieces of flavored meat product, and bits of animal hide.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne R. Abbott whose telephone number is (571) 272-6896. The examiner can normally be reached on Monday-Thursday 9:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on (571) 272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Yvonne R. Abbott
Primary Examiner
Art Unit 3644